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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,144	07/08/2003	Sandro Pannioli	F3312(C)	2072

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

DONOVAN, MAUREEN C

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,144

Applicant(s)

PANAIOLI ET AL.

Examiner

Maureen C Donovan

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10616144, filed on July 8, 2003.

Specification

1. The disclosure is objected to because of the following informalities: The US patent number referenced on page 1, line 15 of the specification appears to be incorrect. US 4416085, as written in the specification, does not disclose "a typical lasagna meal prepared for convenience" as stated in the specification. The examiner assumes that the patent number the applicant intended to reference was US 4418085. Appropriate correction is required.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Figure 1, Reference 1 and Figure 4, Reference 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by

SirRedhawk, Google Usenet discussion forum post (retrieved from the Internet).

SirRedhawk discloses food product comprised of at least three pasta layers the pasta layers being interleaved with one or more sauce layers (see Page 2, lines 23-26), as by following the directions disclosed by SirRedhawk, a food product would be generated that had at minimum three pasta layers and two layers of sauce. SirRedhawk further discloses that at least two of the pasta layers are provided for by a rectangular pasta sheet extending around the remaining layers of the product and sealed along two opposing edges and that the seal along the opposing edges of the rectangular pasta sheet provides one of the pasta layers within the product (see Page 2, lines 18-21). Note that the strips of pasta, also called Italian lasagna pasta, as disclosed by SirRedhawk are assumed to be rectangular as that is the common shape of lasagna pasta.

2. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Nilsson.

Nilsson discloses a packaged frozen food comprising a plurality of pasta products (see Column 5, lines 39-44).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk as applied to claims 1-2 above, and further in view of Nilsson, European Patent number 882 406. SirRedhawk discloses all the features of the instantly claimed invention except for the specific type of sauce layers the pasta product would be comprised of. Nilsson teaches that the sauces used in lasagna are normally a cheese-flavored sauce and a vegetable and/or meat flavored sauce (see Column 1, lines 12-14). To use the sauce types taught by Nilsson in the food product of SirRedhawk would have been obvious to one of ordinary skill in the pasta art at the time of the invention as these sauces are conventionally utilized in making lasagna, and the applicant discloses in the specification that the pasta product claimed is in the lasagna category.

2. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk as applied to claims 1-2 above, and further in view of Mattson, US Patent number 5 077 066. SirRedhawk discloses all the features of the instantly claimed invention except for the ratio of pasta to sauce in the product. Mattson teaches a frozen food product wherein the proportion of pasta to the remaining ingredients in the product is in the range from 5:95 to about 90:5 wt/wt (see Column 6, line 27). The remaining ingredients as taught by Mattson are sauce concentrate, meat and vegetables, which is defined by applicant in Claim 3 (which Claim 4 is dependant on) as sauce. The ratio claimed by applicant is within the range taught by Mattson. Applicant discloses in the specification that the ratio of pasta to sauce is important in order to "provide favorable textural contrasts" (see Specification, page 3, line 16-19). Therefore, it would have been obvious to one skilled in the pasta art at the time of the invention to use a ratio in the range taught by Mattson in order to "assure good mouth feel" (see Column 2, lines 56-58).

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over SirRedhawk as applied to claims 1-2 above, and further in view of Nilsson. SirRedhawk discloses all the features of the instantly claimed invention except for the weight of the product. Nilsson teaches the unit weight of a segment of frozen layered pasta product should be from 20 to 80 grams. The weight claimed by applicant is within the range taught by Nilsson. Nilsson further teaches that keeping the segment weight within this range is important for proper reheating of the frozen segment (see Column 3, lines 20-

22). It would have been obvious to one skilled in the pasta art at the time of the invention to use a weight in the range taught by Nilsson in order to provide a convenient reheat time.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4418085A 11-1983 Becquelet, Louis E. 426/297.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen C Donovan whose telephone number is (571) 272-2739. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MCD



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700